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June 23, 2000

BY HAND DELIVERY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: ALTS Petition for Declaratory Ruling: Loop Provisioning, CC Docket Nos. 98-147, 96-98, 98-141, NSD-L-00-48

Dear Ms. Salas:

Enclosed for filing are an original and seven copies of the Opposition of SBC Communications Inc. to ALTS' Petition for Declaratory Ruling Regarding Broadband Loop Provisioning.

If you have any questions, please call me at 202-326-7969. Thank you for your assistance in this matter.

Sincerely,

Rachel E. Barkow

REB/sls
Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications Inc., Transferee	)	CC Docket No. 98-141
	)	
Common Carrier Bureau and Office of Engineering and Technology, Public Forum on Competitive Access to Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

OPPOSITION OF SBC COMMUNICATIONS INC. TO ALTS' PETITION FOR DECLARATORY RULING REGARDING BROADBAND LOOP PROVISIONING

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OPPOSITION OF SBC COMMUNICATIONS INC. TO ALTS' PETITION FOR DECLARATORY RULING REGARDING BROADBAND LOOP PROVISIONING

INTRODUCTION AND SUMMARY

The petition of the Association of Local Telecommunications Services ("ALTS") is defective both procedurally and substantively, and should therefore be denied. As to procedure, while ALTS couches its petition as one for declaratory relief, ALTS does not seek to resolve any specific controversy, nor does it ask the Commission to remove uncertainty in the law. Instead, ALTS asks the Commission to issue sweeping new rules. ALTS purports to justify this request by claiming that "[c]larification and interpretation of the rules" is within the Commission's wide discretion in a declaratory ruling. ALTS Petition at 3 n.4. But ALTS' requests fall far outside

the realm of "clarification" and "interpretation" of current rules. ALTS wants the Commission, for example, to overrule its recent decision in the *UNE Remand Order*[1] that incumbents are entitled to be paid for the costs of conditioning a loop. ALTS Petition at 29-30. ALTS also believes the Commission should promulgate national provisioning intervals for xDSL loops, even though the Commission has squarely declined to impose national performance standards on the states. In addition, ALTS asks the Commission to extend the scope of sections 251 and 252 of the Telecommunications Act of 1996 ("1996 Act" or "Act") to cover not only access to network elements, but also services – a request that flies in the face of the plain language of the law and the Commission's prior interpretations. The Commission could not simply "declare" these new rules. Such substantive enactments and modifications to the Commission's rules would require a rulemaking proceeding.

Even commencing a rulemaking would be inappropriate, however, because ALTS' requests have no basis in the language or policies of the Act. ALTS makes various allegations about access to broadband loops and supposedly discriminatory treatment by incumbent LECs. But ALTS fails to substantiate any of these allegations or establish a record basis for new rules. In addition, ALTS wholly ignores the existing avenues – such as complaints under sections 202 and 208 of the Act and state enforcement mechanisms – that are available for addressing its alleged grievances.

Even more alarming is the fact that many of ALTS' proposed new rules would be unlawful. As the Commission has recognized, section 251 of the Act only requires ILECs to furnish xDSL loops on a non-discriminatory basis. Yet, ALTS asks for a national performance standard for the provisioning of xDSL loops based on an interim "placeholder" performance

[1] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*").

measure used in Texas. ALTS has not established, and could not establish, that this benchmark would accurately measure nondiscriminatory performance for ILECs in other states. In fact, ALTS' proposed standard would inevitably require some ILECs to provide CLECs a level of service well beyond what the ILECs provide their own retail customers. In other words, ALTS asks the Commission to mandate a superior level of service for CLECs. In this respect, its petition runs afoul of the Eighth Circuit's holding that the Act contemplates access to the existing ILEC network and service levels and that the Commission cannot mandate a superior level of service for CLECs.

Because ALTS fails to establish that any of its requests are necessary or even lawful, its petition for a declaratory ruling should be denied.

DISCUSSION

I. ALTS' Request for a Declaratory Ruling Is Inappropriate

Although ALTS asks the Commission for a "declaratory ruling," it seeks far more than the termination of a specific controversy or a "clarification" of the Commission's current rules to remove uncertainty. *See* 47 C.F.R. § 1.2 ("The Commission may . . . issue a declaratory ruling terminating a controversy or removing uncertainty."). Rather, ALTS asks the Commission to "adopt" various requirements that would impose new substantive obligations on all incumbent LECs. ALTS Petition at 7. For example, ALTS asks the Commission to impose "federally binding minimum requirements for provisioning all loops," *id.*, including national performance standards for the provisioning of DSL-capable loops, *id.* at 27. In addition, ALTS asks the Commission to establish maximum provisioning intervals for special access services. *Id.* at 18. ALTS even asks the Commission to overrule its decision in the *UNE Remand Order* that incumbents may recover their costs for conditioning loops, *id.* at 29-30, when several parties

have raised precisely the same issue in their petitions for reconsideration of the *UNE Remand Order*.

ALTS' requests for substantive rule changes are wholly inappropriate for a declaratory ruling. The Commission has repeatedly rejected similar requests for substantive changes that have been brought under the guise of a declaratory ruling. *See, e.g.*, Memorandum Opinion and Order, *American Network, Inc., Petition for Declaratory Ruling Concerning Backbilling of Access Charges*, 4 FCC Rcd 550, 551-52, ¶ 18 (1989) (refusing to issue a declaratory ruling regarding backbilling because any fixed limit on all backbilling "should be established in a Rule Making proceeding rather than a declaratory ruling proceeding"); Fifth Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform*, 14 FCC Rcd 14221, 14317-19, ¶¶ 187-188 (1999) ("*Access Charge Reform Order*") (noting that a request for a declaratory ruling is especially inappropriate where the facts are disputed and there is disagreement about the applicable law, and issuing an NPRM instead). The Commission will not in the context of a declaratory ruling "read into the rules policies and procedures that were simply not contemplated when the rules were drafted." Order, *GVNW Inc./Management Petition for Declaratory Ruling, or Alternatively, a Waiver of Section 36.612(a) of the Commission's Rules, USF Data Collection*, 11 FCC Rcd 13915, 13918, ¶ 10 (1996) ("*USF Data Collection Order*").

Instead, "such substantive modifications to the Commission's rules for an entire class of companies . . . require a rulemaking proceeding rather than a declaratory ruling." Memorandum Opinion and Order, *GVNW Inc./Management and Citizens Utilities Company Applications for Review*, 14 FCC Rcd 13670, 13675, ¶ 8 (1999); *see also USF Data Collection Order*, 11 FCC Rcd at 13918, ¶ 10 ("[s]ubstantive modifications . . . require a rulemaking"). ALTS itself eventually concedes, in a footnote, that its requests "could alternatively be implemented by

means of an NPRM." ALTS Petition at 3 n.4. Indeed, a rulemaking is the *only* appropriate procedural vehicle for consideration of the sweeping changes that ALTS proposes. But, as SBC discusses below, such a rulemaking is unnecessary because ALTS' requests have no basis in the language or policies of the 1996 Act.

II. The Commission Should Reject ALTS' Broadband Requests

ALTS' scattershot allegations of discrimination in the provisioning of broadband services, and the network elements used for broadband services, are wholly unsubstantiated. Moreover, ALTS ignores existing avenues that are available to carriers that believe they have received discriminatory treatment. Not only can carriers seek relief with state commissions; they can also petition this Commission for relief under the Act. *See* 47 U.S.C. §§ 202, 208, 251, 271. Indeed, the Commission has established an Enforcement Bureau and accelerated docket proceedings for precisely that purpose. ALTS has made no showing that these existing mechanisms for relief are inadequate to address whatever problems it perceives. If ALTS' perceived problems are true violations of the Commission's existing rules – as ALTS suggests, ALTS Petition at 3 n.4 – ALTS' members should seek relief under these measures. The fact that they have not done so suggests that ALTS' allegations are fiction, not fact.

A. ALTS' Complaints About the ILEC Ordering Process Are Unfounded

1. Sequential Provisioning Interval

Beginning with collocation issues, ALTS contends that "[p]resent ILEC ordering processes prohibit CLECs from ordering transmission facilities . . . to their collocation cage until cage completion." ALTS Petition at 8. ALTS complains that CLECs must wait upwards of 165 days because of this rule before receiving a DS-1 loop, whereas ILECs install DS-1 loops for their own services more rapidly. *Id.* at 9. ALTS therefore asks the Commission to issue a ruling that CLECs may place loop orders while the ILEC prepares the collocation facilities. *Id.* at 10.

ALTS' allegations are untrue as far as SBC is concerned. CLECs can – and do – place orders prior to completion of their collocation arrangement. For example, in the Southwestern Bell states (Arkansas, Kansas, Missouri, Oklahoma, and Texas), CLECs can request preliminary point of termination/connection facility assignment (PPOT/CFA) information by week 10 of the collocation implementation schedule. *See* Southwestern Bell Accessible Letter, *Notification of Preliminary Point of Termination/Connection Facility (PPOT/CFA) Information – Arkansas, Kansas, Missouri, Oklahoma, Texas*, CLEC99-008, Jan. 25, 1999. SWBT will provide updates or changes to the PPOT/CFA as they occur until completion of the collocation arrangement. *Id.* Similarly, in California, Pacific Bell will provide PPOT/CFA information to requesting CLECs 14 days prior to cage turnover and will update the information until completion of the cage installation and delivery. *See* Pacific Bell Accessible Letter, *Notification of Preliminary Point of Termination/Connection Facility (PPOT/CFA) Information – California*, CLECC99-214, June 10, 1999. Ameritech likewise is implementing similar procedures. CLECs can use this preliminary information to submit a service order for loop and transport facilities.

Citing unidentified "ILEC ordering literature," ALTS also asserts that the "guideline" for provisioning DS-1 loops is 45 days. ALTS Petition at 8. As ALTS is fully aware, the actual provisioning intervals for DS-1 loops are far less. For example, in SWBT states, the performance measurement is *three days* for between one and 10 DS-1 loops and five days for 11 to 20 loops. *See* Affidavit of William R. Dysart, CC Docket No. 00-4 (FCC filed Jan. 10, 2000). Thus, ALTS' claims regarding "sequential provisioning intervals" are meritless.

2. Information Regarding High-Capacity Facilities in Central Offices

ALTS also asks the Commission to require ILECs to provide CLECs with information about the capacity of transmission facilities serving each ILEC central office. ALTS claims that

this information is necessary for CLECs to make informed decisions about where to collocate. ALTS Petition at 9. The Commission should reject this request.

First, the ability of SBC to track the capacity of the transmission facilities at each of its central offices is a complex process that involves significant manual intervention. In order for SBC to provide the information ALTS' requests, it would have to develop a new system and database to house such information. The 1996 Act does not require that incumbents create new systems and databases. As the Eighth Circuit held, the 1996 Act requires "unbundled access only to an incumbent LEC's *existing* network – not to a yet unbuilt superior one." *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813, 819 & n.39 (8th Cir. 1997) (striking down "superior quality rules"), *aff'd in part, rev'd in part on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). This holding applies to new databases housing information about the network, just as much as to wires and switches.

The Commission itself has recognized this limitation. For example, in the *UNE Remand Order*, the Commission required ILECs to offer nondiscriminatory access to loop qualification information that resides in existing ILEC databases or internal records and is available to the ILEC itself. But the Commission expressly declined a request that it require ILECs "to catalogue, inventory, and make available to competitors loop qualification information through automated OSS even when it has no such information available to itself." *See UNE Remand Order*, 15 FCC Rcd at 3886, ¶ 429. Similarly, in the *Bell Atlantic New York Order*, the Commission rejected contentions that Bell Atlantic should be required "to establish a system for creating and delivering jeopardy notifications to competing carriers that is superior to the system Bell Atlantic has for its own retail representatives or customers." Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the*

Communications Act To Provide In-Region, InterLATA Service in the State of New York, 15 FCC Rcd 3953, 4051-52, ¶ 185 (1999) ("*Bell Atlantic New York Order*").

Second, the creation and maintenance of a new database would be extremely burdensome. Tracking and compiling the relevant data for SBC's 3200-plus wire centers would involve an enormous investment of money and labor. Even if the data could be tracked in a new database initially, it would require constant updating because the network is not static. The facilities in a central office might even change during the pendency of a CLEC's order for a collocation cage, making the information useless for the purpose ALTS suggests.

Third, ALTS makes no effort to show that CLECs actually need this additional information. In fact, the evidence is that they do not. CLECs are requesting collocation on a massive scale, and at a rapidly increasing pace. From January through March 1999, SBC and Ameritech delivered an average of 100 collocation arrangements per month. By the end of 1999, SBC/Ameritech was delivering almost 500 collocation arrangements per month. Now the number is approaching 1000 per month. In all, SBC has delivered nearly 8000 collocation arrangements to date – an average of 2.5 collocation arrangements per wire center. *See* Ex Parte Presentations to Magalie Salas, FCC, from Gary Phillips, SBC, CC Docket No. 96-98 (FCC filed May 19, 2000 and June 13, 2000). This explosion in collocation requests belies ALTS' claim that CLECs have been hampered in their ability to determine where to collocate.

There is, therefore, no legal or policy basis for the Commission to establish new information compilation and disclosure requirements. SBC fully complies with the Commission's current rules by providing whatever loop qualification information is available in its databases. The information is routinely updated and includes all loop make-up information as soon as it enters SBC's databases. In addition, SBC has voluntarily made available detailed

deployment information for Project Pronto (a service initiative discussed more fully below) on the Internet. *See* SBC Communications Inc., Public Affairs – Regulatory Documents <http://www.sbc.com/PublicAffairs/PublicPolicy/Home.html>. This type of disclosure of a major network upgrade is unprecedented, and meets the needs of CLECs that seek to provide broadband service using Project Pronto.

3. Alternatives to DLC-Served Loops

ALTS asks the Commission to "clarify that as a matter of federal law, ILECs must provide alternatives to DLC-served loops." ALTS Petition at 11. Specifically, ALTS wants the Commission to mandate that ILECs must "find copper solutions" when they deploy DLC technology. *Id.*

To the extent ALTS is requesting that incumbents *never* pull copper loops from the ground, even as part of their normal decommissioning of facilities, ALTS' request is squarely at odds with the Commission's *Line Sharing Order*.[2] In that order, the Commission held that it does "not intend . . . to prevent incumbent LECs from constructing new facilities or decommissioning old facilities" and that an incumbent "is not restrained, in the course of normal loop plant maintenance and improvement activities, from migrating customers from copper to fiber loop facilities." 14 FCC Rcd at 20951, ¶ 80.

To the extent ALTS is requesting that incumbents put copper loops in the ground where they currently do not exist, its request is once again in conflict with the Eighth Circuit's holding that incumbents need not provide "a yet unbuilt superior" network. *Iowa Utils Bd.*, 120 F.3d at

[2] Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability* and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*").

813. If SBC or other LECs agree to build a network voluntarily for CLECs, they are entitled to the market price for their efforts.

Finally, to the extent ALTS suggests that SBC's deployment of additional fiber and remote terminals in Project Pronto will reduce competitors' service options, ALTS is simply wrong. As SBC has previously explained, SBC has no plans to remove any copper facilities from service outside the normal course of business. SBC Reply Comments at 14 n.13, *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation to SBC Communications Inc.*, CC Docket No. 98-141 (FCC filed Mar. 10, 2000) ("SBC Reply Comments"). Rather, SBC will apply its normal facilities retirement policies to all of its copper loops, irrespective of whether they are overlaid with DLC. Pursuant to SBC's routine guidelines, copper cables are kept in service as long as they provide acceptable service levels and can be economically maintained. Letter from Paul K. Mancini, SBC, to Carol E. Mattey, FCC, at 9, CC Docket No. 98-141, June 2, 2000 ("Project Pronto Ex Parte").

Moreover, contrary to ALTS' claim, Project Pronto substantially *increases* the service options available to CLECs that want to provide advanced services, particularly to the mass market. Whereas previously CLECs generally could not provide xDSL service to customers more than 18,000 feet from the central office, Project Pronto enables them to do so. Project Pronto will allow carriers to offer ADSL service to more than 20 million customers who cannot be served today. SBC Reply Comments at 3. Project Pronto thus provides a critically important additional option to all providers of advanced services, including CLECs.

Significantly, SBC is not deploying DLC equipment simply because of its advanced services capabilities. To the contrary, DLC equipment makes it possible to provide voice

services on a more efficient and cost-effective basis. For that reason, SBC and other ILECs have been using fiber-fed remote terminals for more than 15 years. Project Pronto Ex Parte at 4-5. That is not news to the Commission. The Commission has itself acknowledged the benefits of DLC systems.[3] Indeed, even ALTS disavows any attempt to "quarrel with the ILECs' decisions to upgrade their local network to improve its robustness and efficiency." ALTS Petition at 11. ALTS' suggestion that DLC deployments are intended to reduce competitive options is, therefore, mere posturing.

4. Subloops

The Commission held in the *UNE Remand Order* that incumbents must provide access to subloops, which the Commission defines as "portions of the loop that can be accessed at terminals in the incumbent's outside plant." 15 FCC Rcd at 3789, ¶ 206. The Commission notes that "[a]n accessible terminal is a point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within." *Id.*

ALTS suggests that the Commission should "reiterate[]" in a new ruling that ILECs must provide subloop unbundling. ALTS Petition at 12. The Commission, however, was quite explicit in the *UNE Remand Order* that subloop unbundling at any technically feasible point is required, so there is no need for the Commission to restate its existing rules. To the extent ALTS really wants a modification of the existing rules or expanded subloop unbundling, it must

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[3] Memorandum Opinion and Order, and Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24011, 24085, ¶ 165 (1998) (noting that DLCs "are an efficient means of aggregating subscriber traffic on to common transmission facilities, usually fiber, for transmission from a remote terminal to the central office, rather than dedicating a separate transmission facility (*e.g.*, a copper loop) for each subscriber's traffic all the way from the customer's premises to the central office"); Public Notice, *Common Carrier Bureau Solicits Comments on Proposed Modifications to ARMIS 43-07 Infrastructure Report*, 13 FCC Rcd 5083, 5086, ¶ 10 (1998) ("The expanding deployment of digital end office switches has fostered the development and deployment of a new version of DLC, called Integrated Digital Loop Carrier ("IDLC"), which allows carriers to serve even more subscribers with fewer transmission paths. IDLC, which is generally deployed over fiber-optic cable, provides high-capacity transmission facilities closer to subscribers, so that these subscribers can use advanced telecommunications services.") (footnote omitted).

articulate its request specifically and provide the basis for its request – something it has failed to do in its petition. *See* 47 C.F.R. § 1.401(c).

Instead, ALTS merely states that Project Pronto – even though it has not yet been deployed – "best illustrates the difficulties" CLECs have in obtaining subloops, such as CLECs' supposed inability to obtain DLC subloops for voice services only. ALTS Petition at 12. At the outset, it must be stressed that Project Pronto will not eliminate any existing UNE option, including subloop unbundling, available to CLECs today. SBC will continue to offer unbundled access to the copper subloop and the high frequency spectrum of the copper subloop. *See Line Sharing Order*, 14 FCC Rcd at 20956, ¶¶ 91-92. In conjunction with these offerings, SBC has created an additional option for CLECs. CLECs can take advantage of a new Broadband Service to gain data transport from the customer premises to the central office on the same terms and conditions as SBC's separate advanced services affiliate. Moreover, SBC is currently developing an additional network service arrangement to accommodate CLECs that want to provide integrated voice and data xDSL service over SBC's new DLC equipment. Although ALTS takes issue with the fact that SBC originally did not make this voice-and-data option available as part of its Broadband Service, ALTS Petition at 14, SBC voluntarily began developing this offering for CLECs as soon as CLECs demonstrated an interest and SBC confirmed its technical feasibility. And if ALTS' members want to provide voice-only service using SBC's facilities, without buying an unbundled loop, they can simply resell SBC's POTS. No new service offering is needed.

Insofar as ALTS is concerned with network unbundling, as opposed to SBC's service offerings over DLC equipment, ALTS is alluding to a technical reality that goes far beyond Project Pronto. As the Commission recognized in the *UNE Remand Order*, IDLC loops are

integrated with the switch. *See* 15 FCC Rcd at 3793-94, ¶ 217. By the definition and design of IDLC technology, it is not "practicable" to separate the loop from the switch. *Id.* at 3794, ¶ 217 n.418. Thus, these loops can only be accessed before the point where the traffic is multiplexed. *Id.* at 3793-94, ¶ 217. SBC provides this access to subloops for CLECs' chosen services. SBC also provides work-arounds to provide full unbundled loops (for voice services or voice and data services) wherever possible. If a CLEC requests one or more unbundled loops serviced by IDLC or remote switching technology, SBC, where facilities are available, moves the requested unbundled loop(s) to a spare, existing physical pair or a universal digital loop carrier unbundled loop at no additional charge to the CLEC. *See, e.g.*, Interconnection Agreement-Texas Between Southwestern Bell Telephone Company and CLEC, Attach. 6 - UNE, § 4.4 ("Texas 271 Agreement"). Such arrangements provide CLECs every option that realistically could be provided.

B. ALTS' Claims Regarding Special Access Have No Basis in the Act

ALTS asks the Commission to extend its nondiscrimination rules to special access circuits "in keeping with the nondiscrimination mandate of Section 251." ALTS Petition at 18. Specifically, ALTS wants a rule that would require ILECs "to provision special access circuits within the same interval in which they install these circuits for their own retail services." *Id.*

ALTS' invocation of section 251 is entirely misplaced. Section 251's nondiscrimination standards apply to interconnection, 47 U.S.C. § 251(c)(2), access to network elements, *id.* § 251(c)(3), and services for resale, *id.* § 251(c)(4)(B). Another section of the Act – section 202 – explicitly applies to the provision of "services" such as special access for purposes other than resale. *See* 47 U.S.C. § 202(a) ("It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in . . . *services* for or in connection with like communication service . . . .") (emphasis added).

Thus, it is not the nondiscrimination standard of section 251 that applies to special access services, but the "unjust or unreasonable discrimination" standard of section 202. As the Commission has explained, "the term 'nondiscriminatory' in the 1996 Act is not synonymous with 'unjust and unreasonable discrimination' in section 202(a), but rather is a more stringent standard. Finding otherwise would fail to give meaning to Congress's decision to use different language." First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15928, ¶ 859 (1996) ("*Local Competition Order*") (footnote omitted); *see also id.* at 15612, ¶ 217 ("The nondiscrimination requirement in section 251(c)(2) is not qualified by the 'unjust or unreasonable' language of section 202(a). We therefore conclude that Congress did not intend that the term 'nondiscriminatory' in the 1996 Act be synonymous with 'unjust and unreasonable discrimination' used in the 1934 Act, but rather, intended a more stringent standard.").

Because ALTS' complaints regarding special access fall outside the parameters of section 251, its members should, if they have a genuine grievance, seek relief under the nondiscrimination standard of section 202. But while ALTS makes much of Bell Atlantic's allegedly poor provisioning of special access circuits, ALTS Petition at 17, ALTS does not contend that this has been the subject of a complaint under sections 202 and 208. Nor does ALTS offer any evidence that the Commission cannot address whatever allegations of discrimination regarding special access may arise. In short, ALTS has made no showing that the new rule it seeks is in any way necessary.

But ALTS goes beyond asking the Commission to establish unnecessary and unlawful nondiscrimination rules; it also asks the Commission to impose maximum provisioning intervals for special access services on the theory that such intervals are necessary to prevent

discrimination. *Id.* at 18. ALTS suggests that the Commission should use certain post-merger reports required of Bell Atlantic/NYNEX as the basis for establishing these intervals. *Id.*

The Commission should reject these requests. First, there is no need for the Commission to become even more deeply involved in regulating the provisioning of special access services. The special access market is subject to vigorous and growing competition. As far back as 1992, the Commission recognized that "competition [for high capacity special access/private line services] is already developing relatively rapidly in the urban markets"[4] – so much so that it provided ILECs with increased flexibility in pricing their special access services.[5] More recently, the Commission established a deregulatory framework for special access pricing, in further recognition of the highly competitive nature of that market. *See Access Charge Reform Order*, 14 FCC Rcd at 14225, ¶ 3. And just a few weeks ago the Commission observed that "[c]ompetitive access, which originated in the mid-1980s, is a mature source of competition in telecommunications markets." Supplemental Order Clarification, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183, ¶ 18 (rel. June 2, 2000). Given the advanced state of competition in this market, there is no need for new performance standards or regulations.

Second, the Commission has required performance reporting addressing the quality of BOC access services, including special access services, for a decade. *See* Second Report and Order, *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786, 6830-31, ¶ 360 (1990); Memorandum Opinion and Order, *Policy and Rules Concerning Rates for Dominant Carriers*, 6 FCC Rcd 2974 (1991) (establishing quarterly and semiannual service

[4] Report and Order and Notice of Proposed Rulemaking, *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369, 7453, ¶ 177 (1992).

[5] *Id. See also id.* at 7454, ¶ 179 n.412 ("[W]e deem DS1 and DS3 special access services to be subject to competition.").

quality reports). For example, Automated Reporting and Management Information System ("ARMIS") filing requirements include detailed information on installation and repair intervals for service provided to interexchange carriers, blockage on common trunk groups between local exchange carriers' end offices and the access tandems, and counts of complaints by residential and business customers, among other categories of information. *See* 47 C.F.R. § 43.21. Open Network Architecture ("ONA") rules impose additional access-related reporting requirements. *See id.* §§ 51.325-.335. ALTS has given no indication that this information is insufficient for the Commission to determine if an incumbent is discriminating in violation of section 202.

Finally, as SBC discusses in greater detail below, *see infra* Part III, a "maximum special access provisioning interval" would not, in any event, reveal discrimination against the CLEC. It would simply establish an arbitrary benchmark that would almost certainly require some ILECs to provide better service to CLEC customers than other customers receive. ALTS' proposed numerical standard from the Bell Atlantic/NYNEX post-merger reports is a prime example: there is simply no reason to believe – and ALTS provides none – that this standard is appropriate for other ILECs and their networks. For many ILECs, such a standard would be well above what those ILECs provide to their interexchange wholesale customers.

Just as ALTS asks the Commission to extend UNE nondiscrimination standards to access services, so, too, does it ask the Commission to extend OSS requirements to access services. Specifically, ALTS asks for a rule requiring ILECs to provide loop make-up information for special access circuits. ALTS Petition at 19. Like ALTS' request to extend the UNE nondiscrimination standards to access services, its request to extend loop make-up information requirements to special access services is meritless.

Loop make-up information must be provided to CLECs as part of the loop UNE. When CLECs purchase an unbundled loop, they take all the risks that go along with it and effectively control the loop. *Local Competition Order*, 11 FCC Rcd at 15668, ¶ 334. They therefore need the relevant loop make-information "to determine whether the loop is capable of supporting xDSL and other advanced technologies." *UNE Remand Order*, 15 FCC Rcd at 3885, ¶ 426. In compliance with the Commission's *UNE Remand Order*, as part of its pre-ordering OSS, SBC offers CLECs identical access to the loop make-up information available to its retail operations, and in the exact same time frame.

But a special access circuit is *not* a UNE. The CLEC does not exercise control over a special access circuit, nor does it bear any kind of risk in terms of whether or how it is used. Subject to regulatory restrictions, the incumbent is free to vary the underlying technology and loops that are part of the service as long as it meets the specifications of the service; the CLEC has no right to a particular loop. Thus, it makes no sense to require the incumbent to provide particular make-up information to the CLEC, and the Commission has not required it.

A CLEC can obtain loop make-up information, of course, if it orders a loop UNE. But, if a CLEC makes a deliberate business decision not to order a UNE and instead buys an incumbent LEC's *service*, it cannot then claim that the standards that apply to loop UNEs must apply to that service.

C. The Commission Has Already Concluded that Incumbents Are Entitled To Recover Their Costs for Loop Conditioning and Any Challenge to that Determination Must Be Made in a Petition for Reconsideration.

ALTS' petition further asks the Commission to "hold that loop conditioning charges, and other recurring and non-recurring charges" must adhere to TELRIC. ALTS Petition at 29.[6]

[6] ALTS refers to the process of removing accreted loop devices such as load coils, bridged taps, and repeaters, as "de-conditioning loops." ALTS Petition at 28. The Commission and the industry, of course, refer to

A mere seven months ago, in the *UNE Remand Order*, the Commission concluded that incumbents "should be able to charge for conditioning . . . loops,"[7] endorsing its determination in the *Local Competition Order* that the requesting carrier should bear, under the cost recovery provisions of section 251(d)(1) of the Act, "the cost of compensating the incumbent LEC for [loop] conditioning."[8]

ALTS acknowledges, in a footnote, that some parties have sought reconsideration of that decision. ALTS Petition at 29 n.82. Those petitions are currently pending before the Commission. It is untimely and inappropriate for ALTS to challenge the *UNE Remand Order* collaterally through a petition for a declaratory ruling when the very same issue is already pending before the Commission. *See, e.g.*, *USF Data Collection Order*, 11 FCC Rcd at 13918, ¶ 10 (denying a petition for a declaratory ruling when the rule changes proposed were also raised in a pending rulemaking).

Because this issue is being considered in the context of the petitions for reconsideration, it is not necessary to address the substance of ALTS' arguments here. To the extent the Commission may consider ALTS' argument on its merits, however, SBC refers the Commission to its opposition to the petitions for reconsideration of the *UNE Remand Order*. SBC's Consolidated Opposition to Petitions for Reconsideration and Clarification at 27-30, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (FCC filed Mar. 22, 2000). As SBC explained, loop conditioning costs are not

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this process as "conditioning" loops. *Line Sharing Order*, 14 FCC Rcd at 20952-54, ¶¶ 81-87. ALTS' linguistic revisionism is apparently an attempt to divert attention away from the fact that ALTS would like to have incumbents tailor their network for the benefit of CLECs without receiving compensation from the CLECs. ALTS Petition at 29-30. As discussed in Part II.C., the Commission has already soundly rejected this argument.

[7] *UNE Remand Order*, 15 FCC Rcd at 3784, ¶ 193 (citing *Local Competition Order*, 11 FCC Rcd at 15692, ¶ 382).

[8] *Local Competition Order*, 11 FCC Rcd at 15692, ¶ 382 & n.830.

embedded, historical costs. Quite the contrary, the cost to modify the incumbent network is an actual, forward-looking cost that is incurred to change the incumbent's network, as it exists today, for the CLEC's benefit.[9] There is nothing "historical" about it.

III. National Performance Standards for xDSL Loops Are Unlawful and Unnecessary

ALTS asks the Commission to issue a "declaratory ruling" containing federally binding minimum xDSL-capable loop provisioning requirements. ALTS Petition at 19. In particular, ALTS urges the Commission to adopt a "federally binding maximum interval" for provisioning xDSL-capable loops, *id.* at 24. Like the proposed substantive requirements discussed in Part II, above, this request is both unlawful and unnecessary.

A. A National Performance Standard for xDSL Loop Provisioning Would Not Satisfy the Nondiscrimination Standard and Would Require Incumbents To Build a Superior Network in Violation of the Act

Section 251(c) of the Act requires that ILECs provide interconnection and access to UNEs "on rates, terms, and conditions that are . . . nondiscriminatory." 47 U.S.C. § 251(c). The Commission has held that this nondiscrimination standard mandates that, where there is a retail analogue, incumbents provide network elements to CLECs in "substantially the same time and manner that an incumbent can for itself." *Local Competition Order*, 11 FCC Rcd at 15764, ¶ 518; *see also* Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543, 20616, ¶ 135 (1997). Where UNEs without retail analogues are involved, the incumbent must provide access in a manner that allows an equally efficient competitor a "meaningful opportunity to compete" in the particular market at

[9] And as the FCC has recognized, conditioning loops to remove impediments such as load coils or excessive bridged taps "can be expensive." First Report and Order and Further Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 4761, 4767, ¶ 10 n.10 (1999).

issue. *Id.* at 20614, ¶ 130 (internal quotation marks omitted). The 1996 Act does not mandate a minimum service level, nor does it require incumbents to redesign their networks to provide CLECs with better access to network elements than what the incumbent itself enjoys.

For this reason, the states have based provisioning intervals on a "parity" standard. For instance, the Performance Measurements and Business Rules in Texas provide that the average installation interval for DSL should be based on parity with SWBT. *See* SWBT Performance Measurements and Business Rules, Version 1.6, Measurement #55.1, Average Provisioning Intervals for Unbundled Network Elements, at 65, 69, Installation Interval – DSL.[10] Similarly, the average DSL-loop provisioning interval in New York is also based on parity with Bell Atlantic retail. *See* New York State Carrier-to-Carrier Guidelines Performance Standards and Reports, Compliance Filing at 46, Case 97-C-0139 (Feb. 28, 2000).

Using parity as the standard, some states have set specific provisioning intervals calibrated to the capabilities of the particular incumbent network. *See, e.g., id.*; Rhythms Arbitration Award at 64-65.[11] Such measures are both time-sensitive and ILEC-specific. The Texas PUC, for instance, recognizes this fact by reevaluating SBC's Texas performance measures every six months to ensure that they are appropriately measuring parity with the incumbent's network, among other considerations. *See* Supplemental Reply Affidavit of William R. Dysart ¶ 75, CC Docket No. 00-65 (FCC filed May 19, 2000).

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[10] In its *Line Sharing Order*, the Commission mistakenly referred to Measurement 55.1 as requiring particular intervals. 14 FCC Rcd at 20987, ¶ 174. In fact, the measurement as written requires parity. Thus, ALTS' reliance on the three-day interval cited in the *Line Sharing Order* is mistaken. In fact, the shortest interval in Texas for xDSL-loops comes from an arbitration proceeding with Covad and Rhythms, which established a 3-5 business-day interval. *See* Arbitration Award at 64-65, *Petition of Rhythms Links, Inc. for Arbitration*, Docket No. 20226 (Texas PUC Nov. 30, 1999) ("Rhythms Arbitration Award").

[11] In Texas, however, SBC's own retail provisioning interval is actually *longer* than the 3-5 day interval available for CLECs. *See* Supplemental Joint Affidavit of Carol A. Chapman and William R. Dysart, CC Docket No. 00-65 (FCC filed Apr. 5, 2000).

A single, "one size fits all" national performance standard, in contrast, would not take into account the differences in underlying incumbent networks and systems. For some incumbents, the standard would be too low, and therefore ineffectual. For other incumbents, the standard would require more than their existing network can offer. And, as DOJ just noted, if a performance provisioning interval is established that is shorter than the interval for retail, quality service does not necessarily follow. In other words, standard provisioning intervals and equivalent quality can only be required if the standard intervals are tied to the retail performance of the particular ILEC. *See* Ex Parte Submission of the U.S. Dept. of Justice at 6, CC Docket No. 00-65 (FCC filed June 13, 2000) ("DOJ Texas 271 Evaluation").

Yet, it would be no defense under ALTS' proposal that an incumbent does not provide loops for its own retail operations in the same time frame as the national standard. Thus, although ALTS claims it wants an interval "reasonably calculated to mirror the interval ILECs presently provide to themselves," ALTS Petition at 8, and suggests that the Texas PUC's requirements should be adopted as that interval, ALTS' proposed standard for xDSL-capable loops is not calibrated to what the incumbent provides itself.[12] As Sprint noted when LCI and CompTel previously requested national performance standards, it would be "unreasonable to impose 'best-of-class' standards on all ILECs, since that might exceed the parity implicit in the nondiscrimination standard, and might not reflect the differences in operating environments faced by different ILECs." Comments of Sprint Corporation at 9, *Petition of LCI International*

[12] The standard ALTS cites, moreover, is actually a performance measurement that Texas adopted as temporary standard. In the absence of experience with DSL-loop provisioning, the Texas PUC adopted the provisioning interval for DS-1 loops as a placeholder benchmark to measure xDSL provisioning. The Texas PUC is expected to establish a new performance benchmark calibrated to DSL-loop provisioning shortly. In the interim, the Texas PUC approved interconnection agreements with a 3-5 business-day interval for orders for 1-10 loops. *See* Rhythms Arbitration Award at 64-65. The Texas 271 Agreement specifies that the provisioning and installation interval for a xDSL-capable loop, where no conditioning is requested, is 5-7 business days on orders for 1-20 loops. Texas 271 Agreement, Attach. 25-xDSL-TX, § 7.1.

Telecom Corp. and Competitive Telecommunications Association for Expedited Rulemaking, RM 9101 (FCC filed July 10, 1997).

This Commission has explained that it would be "premature" to consider the adoption of a national standard precisely because "states are considering performance standards" and because the Commission has not "developed a sufficient record to consider proposing performance standards." Notice of Proposed Rulemaking, *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory* Assistance, 13 FCC Rcd 12817, 12869, ¶ 125 (1998) ("*Performance Measurements NPRM*"). ALTS vaguely alludes to "extensive records before the FCC" to support its request, ALTS Petition at 21, but does not point to a single specific piece of evidence that supports a national xDSL loop performance standard of any kind, much less the particular standard ALTS proposes. *Id.* There is not a shred of evidence in this or any record that the Texas PUC's current standard is appropriate for all states and all incumbent LECs.

Although ALTS suggests that national standards would simplify the section 271 process, ALTS Petition at 25-26, that is not the case. The competitive checklist requires only that the BOCs provide "[n]ondiscriminatory access to network elements," 47 U.S.C. § 271(c)(2)(B)(ii), and forbids the Commission from expanding this requirement, *id.* § 271(d)(4). As noted above, a national performance standard would shed no light on whether an incumbent is providing the CLEC *nondiscriminatory* access to xDSL loops. Rather, it would establish an arbitrary baseline that may or may not reflect the incumbent's satisfaction of checklist requirements in a particular state, and surely would be misused in state-specific section 271 proceedings. *Cf. Bell Atlantic New York Order*, 15 FCC Rcd at 4208 (Concurring Statement of Commissioner Harold W. Furchtgott-Roth) (arguing against use of one state's performance metrics for other states because

"[s]ection 271 . . . clearly contemplates a State by State process" and a uniform standard would "undermine[] the unique role that each State commission is supposed to play in each 271 application").[13]

B. ALTS Provides No Evidence that a National xDSL Performance Standard Is Necessary

A national performance standard for provisioning xDSL loops would not only be unlawful, but also unnecessary. ALTS offers only two allegations in support of a national standard. *First*, ALTS references commenters' complaints regarding SWBT's provision of loops in the SBC Texas 271 application proceeding. ALTS Petition at 21, 23.[14] Even if these complaints had merit, they would hardly demonstrate the need for a national standard. But, in fact, those complaints do not have merit. The Department of Justice has recently concluded that SBC "has achieved satisfactory overall performance providing loops for DSL competitors." DOJ Texas 271 Evaluation at 6. Indeed, in part because SBC "is now providing parity," the Department of Justice recommends approval of SBC's application. *Id.* at 1, 4. Moreover, ALTS has not even attempted to argue that the Texas PUC is incapable of enforcing the nondiscrimination requirement, much less that states are systematically failing to enforce the requirement such that Commission action is necessary. That would be a hard argument to make, given that ALTS is asking the Commission to adopt, as its nationwide standard, the very standard that the Texas PUC has put in place. ALTS Petition at 27.

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[13] For these same reasons, ALTS' requests for federal penalties to enforce uniform national standards, including a sanction that would penalize a BOC for non-compliance in any subsequent 271 proceeding, ALTS Petition at 31, are unfounded.

[14] In support of its claim, ALTS relies on "the firestorm of debate over both the Bell Atlantic-New York and SBC-Texas section 271 applications." ALTS Petition at 25. This "debate" should not be confused with actual deficiencies in the applications or in compliance with sections 251 and 252. For example, ALTS complained in the Texas 271 proceeding that "it is impossible to be sure that the [performance] measures that now exist are sufficient." ALTS Comments at 42, CC Docket No. 00-04 (FCC filed Jan. 31, 2000). But it now argues for those very same standards as the national benchmark. ALTS, then, was not concerned with the satisfaction of the Act's standards, but with opposing long distance relief.

Second, ALTS alleges that Bell Atlantic provides retail service to its end user customers in six days but that CLEC loop orders "languish." *Id.* at 24.[15] To the extent Bell Atlantic has engaged in discriminatory conduct – and ALTS has failed to show that Bell Atlantic has – the proper remedy is a complaint with the state commission or the FCC. To SBC's knowledge, however, no such complaint has ever been filed. Having failed to take advantage of existing processes, ALTS is hardly in a position to argue that these processes are somehow inadequate.

Reliance on state processes is, of course, a bedrock policy principle underlying sections 251 and 252. As the Commission noted in its *Bell Atlantic New York Order*, states are "developing and adopting performance standards and measures for xDSL loop ordering and provisioning, and incumbent and competitive carriers themselves are in the process of defining the relevant criteria for adequate xDSL performance and developing operational provisioning procedures." *See* 15 FCC Rcd at 4117, ¶ 317.[16] The Commission further emphasized its "strong preference" for having this information from the states to evaluate section 271 applications. *Bell Atlantic New York Order*, 15 FCC Rcd at 4123-24, ¶¶ 334, 336.

The Commission also "recognize[s] that metric definitions and incumbent LEC operating systems will likely vary among states, and that individual states may set standards at a particular level that would not apply in other states." *See id.* at 3975, ¶ 55. The state commissions accordingly are in the best position to police the nondiscrimination requirement because of their

[15] ALTS also mentions that SBC's average interval for provisioning loops in Houston was 11 days. ALTS Petition at 24. ALTS has offered no evidence, however, that SWBT discriminates against CLECs in Houston or elsewhere in Texas.

[16] In New York, for example, the state commission issued detailed performance standards in February that include xDSL measures. *See* New York State Carrier-to-Carrier Guidelines Performance Standards and Reports, Compliance Filing, Appendix L, Case 97-C-0139 (Feb. 28, 2000). Likewise, California has been one of the nation's leaders in setting standards for the provisioning of xDSL-capable loops. Texas, too, as ALTS itself stresses, is actively adopting rigid standards. *See, e.g.*, Rhythms Arbitration Award at 64-65. Indeed, the Department of Justice recently commended the efforts of the Texas PUC, finding that SBC, working with the Texas PUC, has "significantly improved the process by which [SWBT] measures and reports its performance in providing unbundled loops for DSL service." DOJ Texas 271 Evaluation at 2.

familiarity with the incumbents' unique systems and capabilities. *See id.* at 4217 (Statement of Commissioner Michael K. Powell) (noting that "state commissions do have an intimate understanding of the applicant, the local market and the various technical and economic issues surrounding [271] checklist compliance" and that the Commission could not "possibly develop the performance metrics and undertake the technical evaluations that a state commission can").[17]

A national xDSL performance standard is especially unnecessary given that SBC and Bell Atlantic/GTE have established (or are in the process of establishing) separate affiliates for advanced services pursuant to their merger conditions. These affiliates make policing the nondiscrimination standard that much easier – which in turn deters discriminatory behavior. *See id.* at 4122-23, ¶¶ 331-332 (noting that the creation of a separate affiliate will "reduce the ability of a BOC to discriminate against competing carriers with respect to xDSL services"); Memorandum Opinion and Order, *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, 14 FCC Rcd 14712, 14890, ¶ 430 (1999) ("*SBC/Ameritech Order*") ("The requirements that the merged firm provide [advanced] services through a separate affiliate, and comply with reporting and performance obligations, decreases the ability of SBC/Ameritech to discriminate successfully, and thereby neutralizes some of SBC/Ameritech's increased incentive to discriminate with respect to

[17] The Commission has noted that "states may choose to set their performance benchmarks at levels higher than what is necessary to meet the statutory nondiscrimination standard." *See id.* at 3975, ¶ 55 n.107. Although ALTS claims that different state standards make it difficult for its members to plan and market their services, ALTS Petition at 26, ALTS makes no effort to demonstrate why it is more critical to have a uniform standard for xDSL-provisioning intervals than it is to have a uniform standard for the myriad other service terms that states traditionally police. For instance, under the Act, states set rates and establish the terms for collocation and interconnection. ALTS does not even attempt to explain why variation in rates does not interfere with its members' planning and marketing but variation in xDSL-provisioning intervals does.

advanced services. Significantly, the merged entity will have to treat rival providers of advanced services the same way that it treats its own separate advanced services affiliate.").

In addition, SBC has agreed to performance measurements as a condition of its merger with Ameritech. These measurements include xDSL benchmarks. *See SBC/Ameritech Order*, 14 FCC Rcd at 14890-91, ¶ 433 ("The Carrier-to-Carrier Performance Plan is specifically designed to permit monitoring for discriminatory conduct in SBC/Ameritech's provision of elements and services utilized by the incumbent or other carriers in providing advanced services. Certain measures, such as the average installation interval for DSL loops (performance measure # 8) and the average response time for loop makeup information (performance measure # 9), were designed specifically to address the needs of advanced services providers. For many of the other measures, data will be reported distinctly for DSL loops."). The Commission has concluded that "[t]he availability of this information will assist entities that are contemplating providing advanced services in the SBC/Ameritech 13-state region, as well as helping carriers already operating in the region to monitor and address any potential increased discrimination." *Id.* Bell Atlantic and GTE recently agreed to similar performance measures. *See* Memorandum Opinion and Order, *Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control*, CC Docket No. 98-184, FCC 00-221, Appendix D, Attach. A (rel. June 16, 2000).

ALTS has wholly failed to establish that this complementary state and federal oversight is somehow insufficient in the case of DSL-loop provisioning intervals. ALTS has provided no justification for overruling the hundreds of arbitrations and negotiations that have already been completed and approved by state commissions, or for departing from this Commission's prior conclusions that national performance standards are unnecessary. In rejecting requests for a

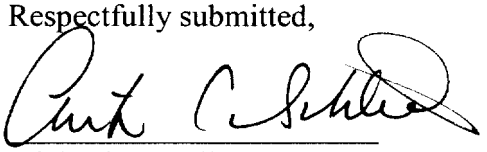
rulemaking on national performance standards regarding OSS, the Commission held that it "prefer[s] instead to rely in the first instance on the industry standard-setting process and contractual arrangements between private parties." *Performance Measurements NPRM*, 13 FCC Rcd at 12825, ¶ 17[18]; *see also id.* at 12902 (Separate Statement of Commissioner Susan Ness) ("[W]e also have chosen at this time not to propose performance or technical standards. Carriers, in the first instance, and state commissions, in arbitrations or rulemakings, are free to establish minimum tolerance levels of performance as they see fit."); Second Order on Reconsideration, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 19738, 19744 (1996) ("[I]t is apparent from arbitration agreements and *ex parte* submissions that access to OSS functions can be provided without national standards."). Thus, the Commission should once again decline to impose national performance standards – because it would be unlawful and because it would be unnecessary.

[18] The Commission has also refused to adopt, as a federal requirement, a particular set of performance metrics. In its *Performance Measurements NPRM*, it merely "proposed a model set of reporting requirements that states could adopt to measure whether an incumbent LEC is providing interconnection, resale, and unbundled network elements on nondiscriminatory terms." *Bell Atlantic New York Order*, 15 FCC Rcd at 3974, ¶ 54 n.106.

CONCLUSION

For the foregoing reasons, ALTS' petition for declaratory ruling should be denied.

Respectfully submitted,



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June 23, 2000

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposition of SBC Communications Inc. to ALTS' Petition for Declaratory Ruling Regarding Broadband Loop Provisioning was served on this 23rd day of June, 2000, on the following persons by hand delivery.

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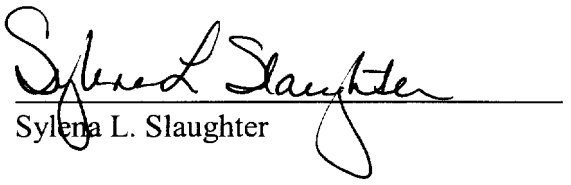

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